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In the Matter of)	
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Rural Health Care)	WC Docket No. 02-60
Support Mechanism)	
)	

The Commission has requested in this proceeding comment on proposed modifications to its rules and other changes governing the rural health care universal service support mechanism.¹ Mobile Satellite Ventures Subsidiary LLC (“MSV”) agrees that certain modifications will help ensure that the rural health care fund is not underutilized. For the reasons set forth in its initial Comments, filed July 1, 2002, and in these Reply Comments, MSV recommends that the Commission modify its rules to allow for the support of satellite-based services. These modifications can be expected to advance the Commission’s stated goal of increasing the number of rural health care providers that could benefit from the rural health care support mechanism. *See Notice* at ¶ 10.

The record suggests a general consensus that, with respect to the universal service funding of rural health care, it is appropriate to change the Commission's current funding policy and compare services based on the functionality of the service from the perspective of the end

¹ *In the Matter of Rural Health Care Support Mechanism*, Notice of Proposed Rulemaking, FCC 02-122, 67 Fed.Reg. 34653 (May 15, 2002) (hereinafter “*Notice*”).

user. Satellite service, as many commentators recognize, offers rural health care providers telecommunications services that are functionally similar to wireline services and, further, are of critical importance in areas unserved by wireline carriers. Therefore, unless and until there is sufficient data establishing that the funding of satellite services is unnecessarily costly for the universal service support mechanism, the Commission should allow rural health care providers in any area to select a satellite provider to fulfill their communications needs.

The Commission should reject those proposals that seek to limit satellite services to unserved areas. There is no evidence in the record to demonstrate that such restrictions are necessary. Not only do these proposals create serious and substantial administrative difficulties, but they conflict with both the Commission's well-established policies favoring consumer choice and the policies of the 1996 Act favoring competitive neutrality.

Discussion

Several factors have prompted the Commission's review of the rural health care universal service support mechanism, including an apparent underutilization, changes in telecommunications technology and its use by the medical community, and a heightened need for the development of a broader and more fully integrated network of health care providers across the nation. *See, Notice* at ¶¶ 10-12.

This review extends to Commission policies regarding the comparison of urban and rural services for the purposes of determining what constitutes "similar services" under Section 254(h)(1)(A). The Commission has proposed replacing its current policy, which focuses on technical similarities, with a policy or rule under which discounts would be calculated by comparing services based on the functionality of the service from the perspective of the end user. *See, Notice* at ¶ 35. The proposal is intended to rectify, *inter alia*, inequities between urban and

rural health care providers that arise when comparisons are made on technical comparisons. Some commentors, including MSV, support this proposed modification. *See, e.g.,* Comments of General Communication, Inc. Verizon recommends use of a functional comparison on a case-by-case basis to avoid administrative problems and potential “abuse and fraud.” *See, Comments of Verizon at 8.* Only WorldCom appears to oppose a functionality test. *See, Comments of WorldCom at 6-7* (finding the Commission’s “identification of the problem vague and speculative”). Both Verizon’s reservations and WorldCom’s opposition should be disregarded. Both carriers appear to be most interested in minimizing the cost of the program, not ensuring that rural health care providers receive support for “telecommunications services which are necessary for the provision of health care services. . . including instruction relating to such services. . . .” 47 U.S.C. § 254(h)(1)(A). While WorldCom would appear to disagree, Comments of WorldCom at 7, nothing in the Act precludes the Commission from construing the term “similar services” to refer to functionally similar services. This statutory construction would be due substantial deference, if challenged. As the Supreme Court recently noted, the “job of judges” in reviewing Commission action is only “to ask whether the Commission made choices reasonably within the pale of statutory possibility.” *See Verizon Communications, Inc. et al. v FCC*, 122 S.Ct. 1646, 1687 (2002).

Numerous commentors agree with the Commission and MSV that in some areas satellite systems may provide the only viable means for a rural health care provider to receive telecommunications services, including voice services. *See Notice at ¶ 38*; Comments of State of Alaska at 4; Comments of Office of Telemedicine of the University of Virginia Health System at 13; Verizon at 9. *Cf.* Comments of WorldCom at 6-7 (“To WorldCom’s knowledge all telecommunications services are generally available,” with the exception of “some higher

bandwidth services” in some “specific locations”). As these commentors recognize, such circumstances make it appropriate to extend universal service support to satellite telecommunications services purchased by rural health care providers. In fact, funding satellite service may ultimately save money in areas where expensive terrestrial build-outs would otherwise be required. *See, e.g.,* Comments of Joseph Tracy et al., at 14.

Several parties, however, have proposed restrictions on the prospective subsidy of satellite services. These parties generally suggest that satellite services should be supported only when satellite is the *only* means of communication available in the area. *See, e.g.,* Comments of Alaska Federal Health Care Access Network at 13; Comments of Kansas Department of Health and Environment at 2; Comments of Kansas Hospital Association at 3; Comments of Verizon at 9. This restriction is offered in response to the Commission’s request for means to address its concern that “[i]n some cases, satellite-based services can be more costly than traditional wireline services” and thus “may prove costly for the universal service support mechanism.” *Notice* at ¶ 38.

The Commission should reject the proposals to restrict universal service support for satellite-based services to only those areas in which there are no telecommunications alternatives. There is no evidence in the record documenting that support for satellite services *will* prove costly to the support mechanism. Significantly, the parties that support this restriction assume that satellite service will, not “may,” prove costly for the support mechanism. These parties neither provide data to support this assumption nor explain *why* satellite service would prove costly.

MSV objects to any policy or rule that would restrict the ability of a rural health care provider to access its service, when such policy or rule is not applied to other services or service

providers.

One of the statutory principles underlying universal service support is competitive neutrality. *See, e.g.*, Comments of Verizon at 9. A competitively neutral program is one in which all service providers may participate or compete. The proposal to restrict support for satellite services violates this fundamental principle. It cannot even be argued that such a proposal addresses a harm, as there is no data in the record that even suggests harm. By definition, a program cannot be competitively neutral when it bars specific service providers based on the type of technology used or in response to speculative concerns regarding a potential cost impact, or when it subjects one type of carrier – but not all participating carriers – to additional administrative requirements and hurdles.

The proposed restriction also raises significant and potentially overwhelming administrative difficulties. If adopted, it appears that some entity – the rural health care provider, the satellite provider, or the Universal Service Administrative Company (“USAC”) – would be required to establish that there is no competitive option to the satellite service. Such a requirement would necessarily increase costs and incur delay. Further, unique fact situations can be expected to raise complex issues that must be decided prior to processing each application. For example, would a small, two-way radio system offering coverage over only a portion of the area in which the rural health care provider operates constitute a competitive option sufficient to foreclose universal service support for satellite services? To what extent, if any, would quality of service be considered in determining whether the rural health care provider has a competitive option to satellite service? Other issues can be expected to arise even after an application is processed. For example, if a long-term contract was executed when MSV was the sole provider, would universal service funding remain in place even if an alternate carrier enters the market?

Authorizing support for satellite service only in those situations when satellite service is the only available option erroneously presumes that satellite service is not, or cannot be, a competitive service. Although MSV's system was designed to serve rural and remote areas, that system allows it to serve *all* areas of *all* states, and it does so at competitive rates. Neither it nor the rural health care providers it serves should be penalized because of decisions by other carriers as to which areas to serve. It should be sufficient for universal service funding purposes that a rural health care provider chooses to use MSV's services and otherwise meets the qualifications of the program.

MSV has suggested several discount proposals for the Commission's consideration. One proposal involved the adoption of a market-oriented approach under which all providers of mobile emergency mobile communications systems would be eligible for the same subsidy. MSV clarifies that this proposal was not intended to compare satellite services to urban terrestrial mobile services in order to determine the discount but, instead, was intended to compare the rural terrestrial cost of mobile services to the urban terrestrial cost (since satellite has no difference) and apply that same discount to satellite. Thus the discount for satellite services would be the same as the discount for terrestrial services.

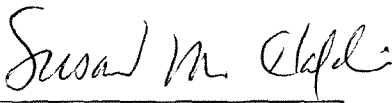
MSV has not asked that its services be subsidized so that the rural health care provider will pay only that which it would pay for a comparable terrestrial-based service, although in some cases that may be the fairest method of calculating the subsidy. MSV has simply asked that equivalent funding be made available for the services it offers. Unless and until it has evidence of a negative impact to the universal service support mechanism, the Commission should focus on expanding – not restricting – the tools available to rural health care providers that will help them save lives.

Conclusion

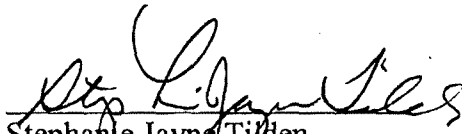
For the reasons discussed herein, MSV respectfully requests that the Commission grant MSV the relief requested in its Petition for Clarification and establish a mechanism that allows MSV to offer discounted telecommunications services to rural health care providers.

Respectfully submitted,

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Dated: July 29, 2002